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No. 397.

IN THE
Supreme Court of the United States

October Term, 1958.

PENNSYLVANIA RAILROAD COMPANY,

Petitioner,

vs.

GEORGE M. DAY, Administrator ad Litem of the
Estate of Charles A. DePriest,

Respondent.

On Writ of Certiorari to the United States Court of
Appeals for the Third Circuit.

Reply Brief for Petitioner

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GEORGE M. DAY, Administrator ad Litem of the Estate of
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Respondent,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT.

REPLY BRIEF FOR PETITIONER.

I. RESPONDENT'S POINT II IS NOT WITHIN THE QUESTION PRESENTED.

The Respondent's contention in Point II of his Brief, commencing on page 24, that he would be deprived of a trial by jury if this Court reverses the judgment below, does not call for consideration on the merits in the case before this Court. The contention now raised by the Respondent is not within the question set forth in the Petition or fairly comprised therein. The issue here is, does a District Court acquire jurisdiction of an alleged wage claim, constituting a grievance, under a railroad collective bargaining agreement solely because the claimant has left active service or is exclusive jurisdiction of such subject matter in the National Railroad Adjustment Board?

Respondent's contention that he is entitled to a trial by jury, even if before the Court, is as applicable to employees in active railroad service as to those who have left railroad service. Implicit in the holding of this Court in *Slocum v. D. L. & W. R. Co.*, 339 U. S. 239 (1950), is a denial of respondent's argument that an employee with a claim or grievance under a railroad collective bargaining agreement is entitled to sue his employer in court and demand a jury trial, rather than progress the dispute to the National Railroad Adjustment Board. In that case this Court said: "We hold that the jurisdiction of the Board to adjust grievances and disputes of the type here involved is exclusive" (339 U. S. at p. 244).

Furthermore, Respondent's claim for extra compensation is based upon a railroad collective bargaining agreement, entered into by petitioner and the craft or class of employees to which DePriest belonged pursuant to the terms of the Railway Labor Act and in contemplation of the disputes ad-

adjustment procedures provided by Congress for the railroad industry and its workers. This is not a simple action for wages based on an individual contract of employment; it is a claim under an agreement covering and affecting many employees to which Congress has seen fit to give special status.

II. RESPONDENT'S POINT III IS NOT WITHIN THE QUESTION PRESENTED.

The Respondent's contention in Point III of his Brief, commencing on page 28, is that the judgment under review cannot be properly reversed on the ground relied upon by the United States District Court that the Respondent is bound by the decisions of the Board in "companion cases" to which he was not a party. This does not call for consideration on the merits here, since it was not alleged by Respondent as a "ground why the cause should not be reviewed by this Court" under Rule 24 (1) of the Revised Rules of the Supreme Court. Likewise, this question, now raised by the Respondent, was not raised in the Petition for Certiorari, nor in the question involved. Furthermore Respondent states in his Brief on page 39, that in outlining the contentions which are being made in the United States District Court against the validity of the awards in other cases, upon which the District Court relied, he is calling to this Court's attention factual material which is not within the record in this case.

Respondent's Point III is basically unsound, since it presupposes that the District Court had jurisdiction of the subject matter of this suit, while the sole question presented to the Court in this case is whether by reason of the inactive status of the claimant, the District Court had jurisdiction of the subject matter or was exclusive jurisdiction of this grievance claim in the National Railroad Adjustment Board.

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CONCLUSION.

Respondent's contentions under Points II and III of his Brief are not raised by the question presented, nor are they fairly comprised therein. Petitioner in thus pointing out the limits of the question involved does not imply any support on the merits with respect to Respondent's contentions concerning jury trial or the finality of Board awards.

Respectfully submitted,

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